IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

CRP.No. 1105 of 2007()

AGAINST THE ORDER DATED 31/10/2007 IN EP 108/2006. IN OS.251/2005 of MUNSIFF COURT,CHENGANNUR
.....

PETITIONER/JUDGMENT DEBTOR

REJI P.SAMUEL, AGED 48 YEARS,
S/O.P.V.SAMUEL, PUTHIYAPURACKAL HOUSE,
ANGADICKAL MURI, CHENGANNUR VILLAGE.

BY ADV. SRI.N.ASHOK KUMAR

RESPONDENTS: DECREE HOLDERS
----

1. P.G.SAMUEL, PULIKAMADATHIL ROSE VILLA,
THITTAMEL MURI, CHENGANNUR VILLAGE.

2. ROSELY SAMUEL, DO. DO.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

C.R.P. NO. 1105 OF 2007

= = = = = = = = = = = = = = =

Dated this the 14th day of December, 2007.

O R D E R

This revision petition is preferred against the order of the Munsiff, Chengannur whereby he has issued warrant of arrest against the revision petitioner. The grievance of the revision petitioner is that he has filed a counter and has contended that he does not have the capacity to pay the entire amount in lump sum and therefore he cannot be detained in civil prison. It is also submitted by him that as per paragraph 6 he has requested the Court to give him instalment facility to deposit the amount. A perusal of the order of the learned Munsiff would also reveal that he has not considered any of these points. As per Order 20 Rule 11(2) CPC after the decree instalment facility can be granted only with the consent of the decree holder. The payment of some amount or offer to payment of the amount in instalment cannot be taken as a ground to say that the judgment debtor is having sufficient means to pay the decree debt. Therefore, the Court has to conduct an enquiry and also consider the

request of the revision petitioner to pay the amount in instalments after hearing the decree holder. Therefore, the order under challenge is set aside and the matter is remitted back to the Court below for fresh consideration of the objections raised by the decree holder and also his permission for instalment facility. Since I am disposing of the case at the admission stage itself the Court below shall give notice to the decree holder, hear both sides and dispose of the matter in accordance with law.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-